

## **FACTSHEET**

**TITLE:** **WAIVER OF DESIGN STANDARDS NO. 02010**, requested by Gerald Spahn on behalf of Thomas Spahn, to waive street trees and sidewalks on "Q" Street and No. 36<sup>th</sup> Street; and to waive street paving on "Q" Street, on property generally located at North 36<sup>th</sup> Street and "Q" Street.

**STAFF RECOMMENDATION:** **DENIAL.**

**SPONSOR:** Planning Department

**BOARD/COMMITTEE:** Planning Commission  
Public Hearing: 07/24/02  
Administrative Action: 7/24/02

**RECOMMENDATION:** Approval of the waiver of street trees, sidewalks and paving on "Q" Street, provided that the owner does not object to the creation of a paving or sidewalk district in the future; and denial of the waiver of street trees and sidewalks on 36<sup>th</sup> Street (8-1: Larson, Newman, Schwinn, Steward, Bills-Strand, Duvall, Krieser and Taylor voting 'yes'; Carlson voting 'no').

### **FINDINGS OF FACT:**

1. The staff recommendation to **deny** these waiver requests is based upon the "Analysis" as set forth on p.3, concluding that there are no unusual circumstances that would warrant the approval of the waivers. The Public Works Department and the Parks and Recreation Department object to the waiver.
2. The applicant's testimony is found on p.4-5. During the testimony, the applicant stated that he would agree to put the sidewalk in on 36<sup>th</sup> Street (p.5).
3. There was no testimony in opposition; however, the record consists of two letters in opposition (p.12-13).
4. On July 24, 2002, the Planning Commission voted 8-1 to approve the waiver of street trees, sidewalks and paving on "Q" Street, provided that the property owner does not object to the creation of a sidewalk and/or paving district in the future. (Carlson dissenting – See Minutes, p.6).
5. The Planning Commission **did not** recommend that the waiver of street trees and sidewalks on 36<sup>th</sup> Street be granted.

**FACTSHEET PREPARED BY:** Jean L. Walker

**DATE:** August 5, 2002

**REVIEWED BY:** \_\_\_\_\_

**DATE:** August 5, 2002

**REFERENCE NUMBER:** FS\CC\2002\WDS.02010

## LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

**P.A.S.:** Waiver of Design Standards #02010

**DATE:** July 10,2002

**PROPOSAL:** Waive street trees and sidewalks on "Q" Street and N. 36<sup>th</sup> Street.  
Waive street paving on "Q" Street.

**CONCLUSION:** There are no unusual circumstances that would warrant the approval of the waivers.  
Public Works Department and Parks and Recreation Department object to the waivers.

**RECOMMENDATION:**

Denial

### **GENERAL INFORMATION:**

**LEGAL DESCRIPTION:** Lots 14 & 15 & E1/2 vacated alley, Block 13 Ridgeway Addition

**LOCATION:** N. 36<sup>th</sup> Street and "Q" Street.

**APPLICANT:** Thomas Spahn  
3528 "Q" Street  
Lincoln, NE 68503  
(402) 477-2687

**OWNER:** same as applicant

**CONTACT:** Gerald Spahn  
1441 Manatt Street  
Lincoln, NE 68521  
(402) 476-3940

**EXISTING ZONING:** R-4 residential

**EXISTING LAND USE:** Single family residential.

### **SURROUNDING LAND USE AND ZONING:**

North:	R-4	Single family residential
South:	P Public	Wyuka Cemetery
East:	P Public	Wyuka Cemetery
West:	R-4	Single family residential

**HISTORY:** Ridgeway Addition was platted in 1893.

**COMPREHENSIVE PLAN SPECIFICATIONS:** The Comprehensive Plan specifies this area as Urban residential.

Guiding Principles for Existing Neighborhoods in the 2025 Comprehensive Plan include:  
“Maintain and enhance infrastructure and services in existing neighborhoods.”  
( page F-75)

The Community Form chapter of the 2025 Comprehensive Plan states that neighborhoods should include interconnected network of streets, trails and sidewalks to encourage walking and bicycling. (page F-21)

The Mobility and Transportation section of the 2025 Comprehensive Plan includes:  
“Continuity– The sidewalk system should be complete and without gaps.” (p. F-97)

**TRAFFIC ANALYSIS:** “Q” Street and N. 36<sup>th</sup> Street are local streets.

**ANALYSIS:**

1. This request is to waive the Subdivision requirements for sidewalks (Sec.26.23.095), street trees (Sec.26.27.090) and street paving (Sec.26.27.010).
2. The waiver request is in association with Administrative Final Plat 96016.
3. There is an existing sidewalk system on N. 36<sup>th</sup> Street that terminates at the north lot line of Lot 15. The installation of the sidewalk would continue the sidewalk system.
4. N. 36<sup>th</sup> Street is paved with curb and gutter abutting Lots 14 and 15, Block 13 Ridgeway Addition. The paving of “Q” Street would continue the existing paved street system.
5. A paving district or paving unit could be requested to pave “Q” Street.
6. Parks and Recreation Department objects to the waiver of street trees on “Q” Street unless street paving is waived.
7. Public Works sees no logic to the waiver of sidewalks and street trees on N. 36<sup>th</sup> Street.
8. Public Works recommends sidewalks, paving and street trees on “Q” Street.

Prepared by:

Tom Cajka  
Planner

# WAIVER OF DESIGN STANDARDS NO. 02010

## PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 24, 2002

Members present: Carlson, Newman, Steward, Bills-Strand, Larson, Krieser, Duvall, Taylor and Schwinn.

Staff recommendation: Denial.

### Proponents

**1. Gerald Spahn**, the applicant, appeared on behalf of his son, Tom, and daughter-in-law, Cindy. His children own property at 36<sup>th</sup> & "Q". The area of application is pretty obvious and it is divided by a lot line that runs east and west. The applicants are seeking to subdivide the property to make the lot line go north and south. This would leave his son's home on the west side of the property and the large vacant area would then be on the east side. That large vacant area could then be developed or sold.

In requesting the administrative subdivision, they discovered that the ordinance requires that all streets abutting and within a new subdivision shall be paved with curbs and gutters. Spahn understands that the staff is recommending denial based upon the subdivision ordinance requirements. Spahn is requesting the waiver, while recognizing that this does not prevent the city from creating a paving district there in the future. Spahn is not attempting to stop the paving. He understands that it is the policy of the Planning Commission to try to get these roads paved within the city that are not paved at this time. The city also wants sidewalks and Spahn does not have a problem with that. However, the ability to develop or sell the east side of the property is going to either save or hurt the property owners financially. If they can sell the east side, then obviously they will have some money with which to go ahead and pave in front of the house. Otherwise, the city will declare a district and they are going to have to come up with \$20,000 to pay for the paving, and then they can go ahead and subdivide and sell the property. The only question is the timing. It would be a big benefit if they could go ahead and do the subdivision and have the opportunity to do something with it while waiting for the city to declare a paving district.

Spahn noted that the Housing Authority had approached his son about purchasing the property, but it requires a subdivision and they cannot subdivide until they put in the paving. Spahn pointed out that this would be a hardship for his children and there is no reason why this can't be subdivided without the paving. Spahn did not know the lot sizes. The sidewalks will depend on the pavement and the trees will depend on what is built. They envision a duplex with two driveways going out towards the east. That road has been rock since 1893.

The record consists of a letter in opposition from Wyuka Cemetery. Spahn acknowledged that Wyuka Cemetery is interested in the road being paved, but what they don't tell you is that the Wyuka Cemetery won't pay for the paving. There is probably \$100,000 worth of paving there. Whatever amount of paving is there, the city will have to foot the bill for ½ plus ¾ of the intersection.

Spahn believes that the staff is somewhat skeptical as to whether Wyuka could be charged for the paving. Paving Unit #108, Block 20, Lots 1 and 2, Ridgeway Addition, is the paving adjacent to the Wyuka Cemetery. That paving was billed to the City.

In summary, Spahn stated that financial relief is the reason they are requesting this waiver.

Ray Hill of Planning staff clarified that each one of the present lots is 7,400 sq. ft. (50 x 142) plus it appears they have half of the alley, adding another 400 sq. ft.

Schwinn clarified that half of the alley has already been vacated. The Commission is being asked to waive street trees, sidewalks and paving on "Q" Street. Is there something that says this street is going to be paved? Tom Cajka of the Planning staff is not aware of anything. 36<sup>th</sup> is paved; Q is not paved between 35<sup>th</sup> and 36<sup>th</sup>. The subject property is only ½ of that block. Cajka believes that Public Works would want to see the whole block paved at one time, possibly through a district. Wyuka is the property owner on the south side of "Q" Street except for one house. This property owner would be responsible for paving the part of "Q" Street that abuts their property; for sidewalks on "Q" and 36<sup>th</sup> Street; and street trees on "Q" and 36<sup>th</sup> (just that which abuts their property). Spahn believes they would have to pay for 1/4 of the intersection. Cajka was not sure of that.

Spahn agreed that the sidewalk on 36<sup>th</sup> Street needs to be put in. He would agree to put the sidewalk in on 36<sup>th</sup> Street, but driving across it getting the basement dug, etc., would tear it up.

Cajka explained that the owner is requested to put up a surety for the sidewalks in association with the administrative plat. They have four years to do the improvements after approval of the plat (sidewalks and street trees); they have two years to do the paving.

Carlson commented to the applicant that if they wouldn't subdivide, they wouldn't be required to do any of the improvements. Spahn agreed, but he believes the city will eventually come along and pave it; however, he believes it would be low priority because "Q" Street doesn't lead anywhere.

Newman stated that she did visit the site. There is a fence around Wyuka on the other side and the only way to get into Wyuka is on R Street. You could take 35<sup>th</sup> to R or S to get into Wyuka. The only property this really does impact is the Spahn property.

There was no testimony in opposition.

Buff Baker of Public Works explained the paving district process. If the property is 100' long, even if the city goes in with an assessment district, the property owner would have to pay for half of the paving and the curb. Baker did not know the district costs. If the improvements were built under an Executive Order, the cost would be about \$85 per lineal foot. Sidewalks would be about \$12.60/lineal foot. He did not know the street tree bond amounts. There is nothing in the current CIP showing any improvements in this area through 2005.

Schwinn wondered whether this could be split to waive the street paving but still require the sidewalks and street trees. Baker indicated that Public Works would prefer that they not be split because the grades of the sidewalk are established by the grades of the street. Bills-Strand suggested that the Commission could require the sidewalks on 36<sup>th</sup> Street where the grade is established. Baker concurred.

Cajka suggested that if the Commission is considering deleting the condition for paving, there should be a condition added that the owner will not object to the creation of a district in the future. Public hearing was closed.

**ADMINISTRATIVE ACTION BY PLANNING COMMISSION:**

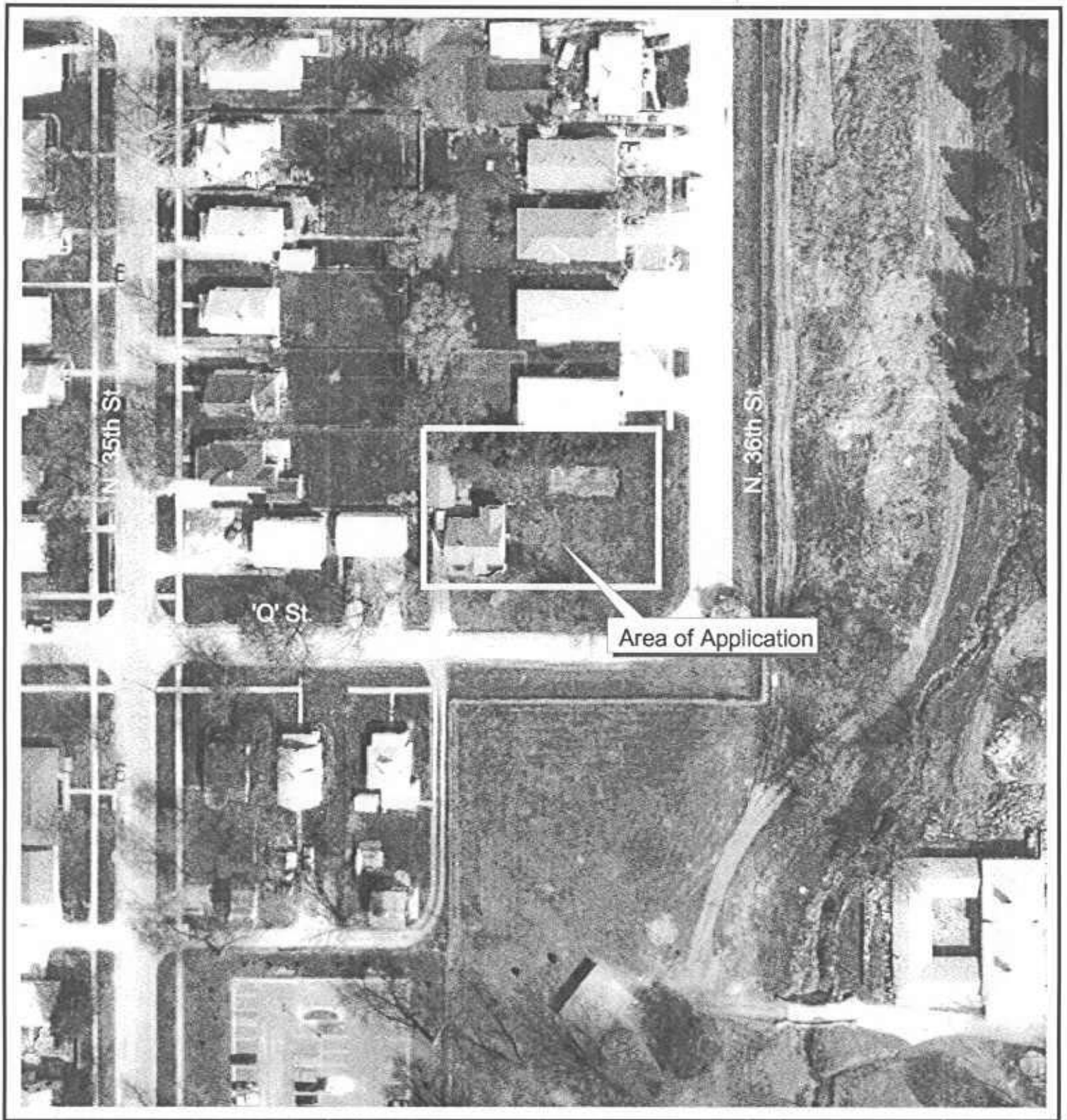
July 24, 2002

Steward moved to approve the waiver of street trees and sidewalks on "Q" Street, and the waiver of street paving on "Q" Street, with the condition that the property owner will not object to the creation of a paving district or a sidewalk district in the future. The intent of this motion is that the owner would be required to put in the street trees and sidewalk on 36<sup>th</sup> Street. Motion was seconded by Bills-Strand.

Carlson understands the motivation but he will vote against the motion because the only reason any of this action is taking place is because of the subdivision of the property for sale. It is not anything the city is forcing them to do. The law is a shepherding principle to get those sidewalks put in.

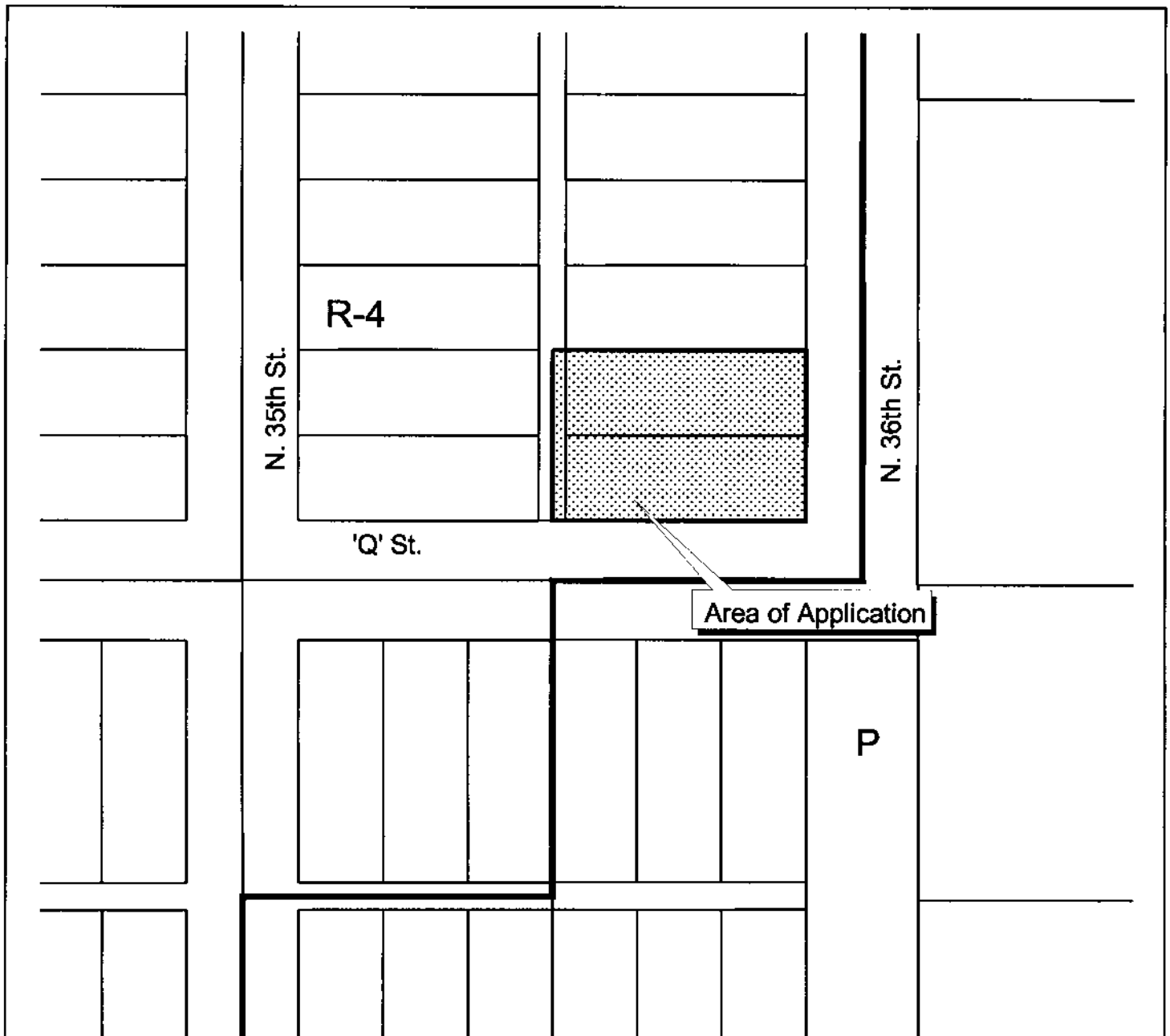
Newman disagreed with Carlson. She believes we have waived these requirements in other areas, such as 2 blocks away from Bryan Hospital where there is a gravel road and no sidewalks and it did have connections. This is an extreme case because it is a corner that goes to nowhere and she believes it is a financial hardship to pay for the whole street.

Motion to waive the paving, street trees and sidewalks on "Q" Street, with the condition that the owner will not object to the creation of a paving assessment district or sidewalk assessment district in the future, carried 8-1: Newman, Steward, Bills-Strand, Larson, Krieser, Duvall, Taylor and Schwinn voting 'yes'; Carlson voting 'no'.



**Waiver of Design Standards #02010**  
**N 36th & 'Q' St.**



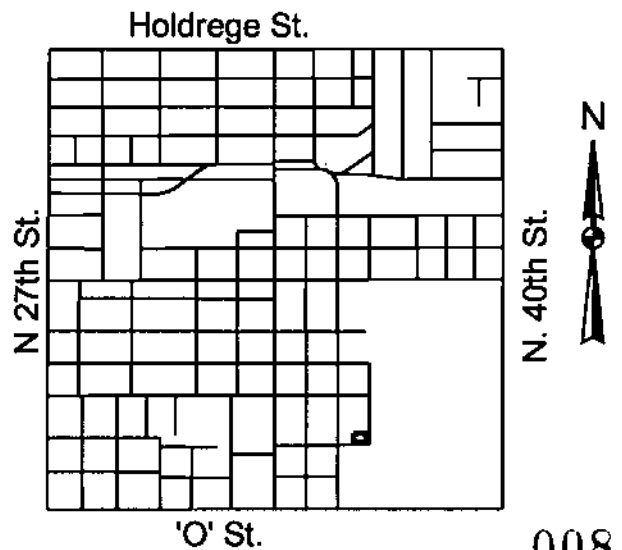
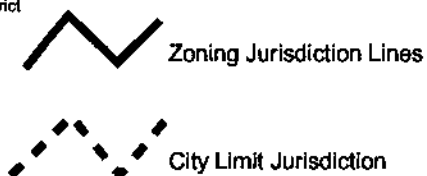


## Waiver of Design Standards #02010 N 36th & 'Q' St.

### Zoning:

R-1 to R-8	Residential District
AG	Agricultural District
AGR	Agricultural Residential District
R-C	Residential Conservation District
O-1	Office District
O-2	Suburban Office District
O-3	Office Park District
R-Y	Residential Transition District
B-1	Local Business District
B-2	Planned Neighborhood Business District
B-3	Commercial District
B-4	Lincoln Center Business District
B-5	Planned Regional Business District
H-1	Interstate Commercial District
H-2	Highway Business District
H-3	Highway Commercial District
H-4	General Commercial District
I-1	Industrial District
I-2	Industrial Park District
I-3	Employment Center District
P	Public Use District

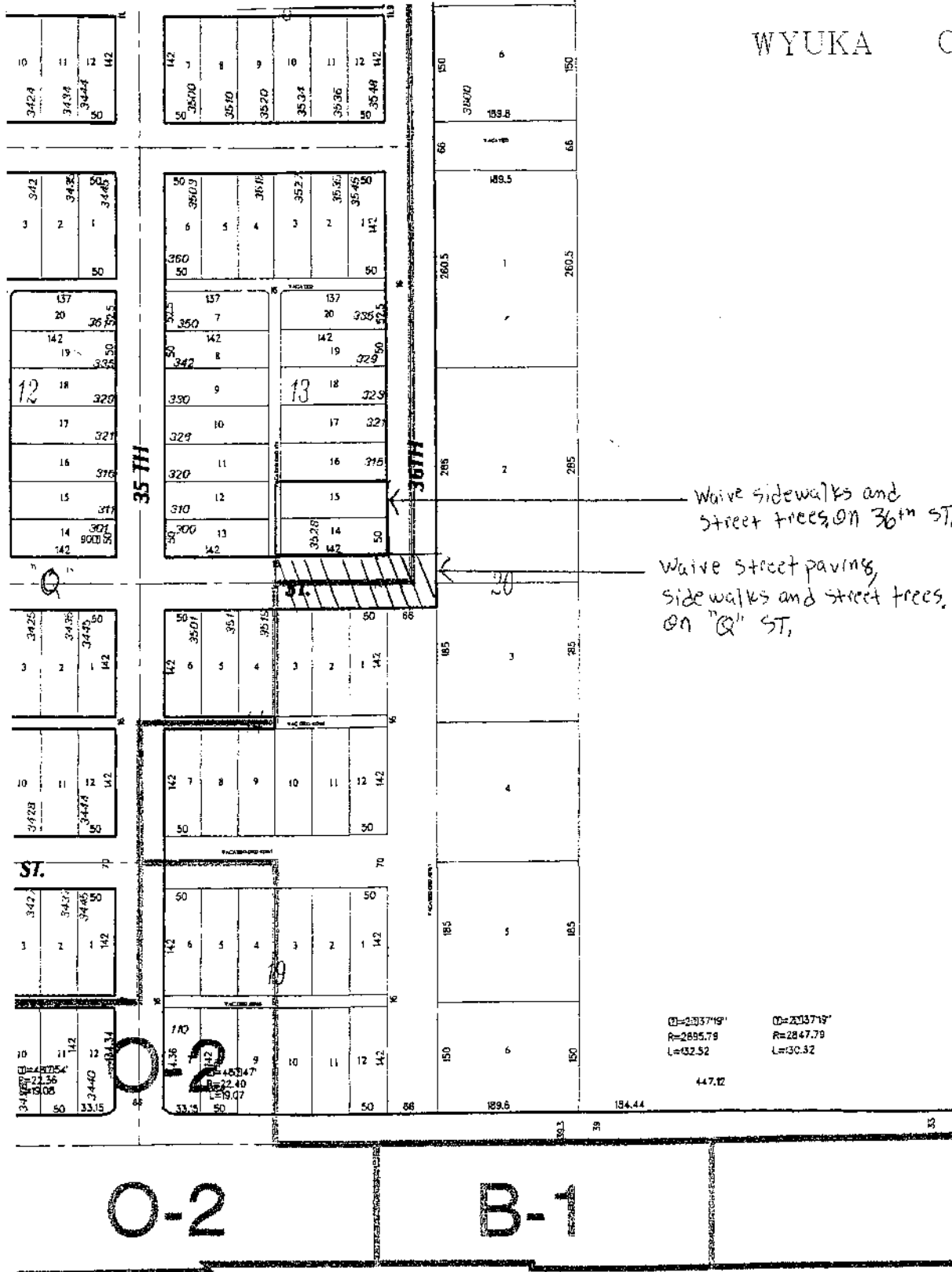
One Square Mile  
Sec. 19 T10N R7E



008



WYUKA C



Waiver of Design Standards #02010  
N 36th & 'Q' St.



009

# Memo



**To:** Tom Cajka, Planning Department

**From:** Mark Canney, Parks & Recreation

**Date:** July 9, 2002

**Re:** 36<sup>th</sup> & "Q" Street

Staff members of the Lincoln Parks and Recreation Department have conducted a plan review of the above-referenced application/proposal and have the following comments:


1. Street tree installation should be in conjunction with street pavement installation. If the requirement of street pavement is waived, than the street tree requirement shall also be waived.

If you have any additional questions, comments or concerns, please feel free to contact me at 441-8248. Thank you.

# M e m o r a n d u m

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**To:** Tom Cajka, Planning

**From:**  Dennis Bartels, Public Works/Public Utilities

**Subject:** Waiver of Subdivision Requirements  
Streets and Sidewalks for Admin. Plat at 36th & 'Q' Streets

**Date:** July 9, 1002

**cc:** Roger Figard, Randy Hoskins, Nicole Fleck-Tooze

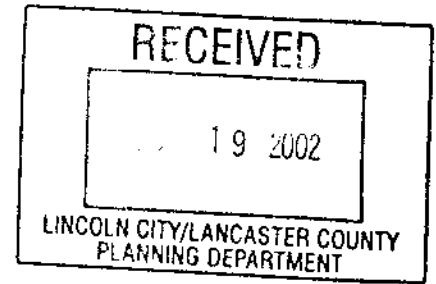
Engineering Services as reviewed the request to waive sidewalks and street trees along 36th north of 'Q' and paving sidewalks and trees in 'Q' Street west of 36th Street and has the following comments:

1. 36th is paved and therefore I see no logic in waiving the sidewalks or trees along 36th.
2. I also recommend that the requirements for paving sidewalks and trees along 'Q' Street not be waived at this time. A paving district or paving unit should be requested to pave this street. If the City Council does not pass legislation to pave the street, then a waiver may be appropriate.

fcj memo to tom cajka ddb

IN OPPOSITION

ITEM NO. 3.4: WAIVER OF DESIGN  
STANDARDS NO. 02010  
(p.227 - Public Hearing - 7/24/02)



July 18, 2002

Lincoln/Lancaster County Planning Commission  
City-County Building  
555 South 10<sup>th</sup> Street  
Lincoln, NE 68508

RE: Waiver of Design Standards 02010 ~ N. 36<sup>th</sup> Street & Q Street

Dear Members of the Board,

Wyuka Cemetery, chartered in 1869 by an act of the Nebraska State Legislature, (NEB. STAT. 12-101) is a *not-for profit, public, charitable corporation* which receives *no* tax funding.

It is our understanding that Mr. Gerald Spahn has requested a waiver of design to waive street paving, sidewalks, and street trees on property located adjacent to Wyuka Cemetery on North 36<sup>th</sup> and Q Street. **Wyuka is *strongly opposed* to the waiver of design.** It would be in the best interest of the city and the public to have this street paved, sidewalks installed and proper installation of trees.

If you have any questions please feel free to give me a call.

Sincerely,

Michael C. Hutchinson, CCE  
Chief Executive Officer

5600 Q Street

Lincoln, NE 68510

Cell: (402) 474-3600

Fax: (402) 474-2650

Email: wyuka@cityoflincoln.net

IN OPPOSITION

ITEM NO. 3.4: WAIVER OF DESIGN STANDARDS #02010  
(p.227 - Public Hearing - 7/24/02)



Sharon & Keith  
Ticknor  
<sticknor@yhti.net>

To: plan@ci.lincoln.ne.us  
cc:  
Subject: Waiver of Design Standards NO. 02010

07/16/2002 04:50 PM  
Please respond to  
sticknor

Tom Cajka,

This note is to show that we support the paving of the street at North 36th Street and Q Street that is the subject of the letter that we received on the Waiver of Design Standards 02010 N. 36th Street & Q Street. We paved the two blocks of N. 36th street several years ago and wanted the Q Street paved at that time.

We have been property owners on N. 36th Street for 20 years and lived in Lincoln for 17 years..

Keith and Sharon Ticknor  
Owners of: 323 & 325 N. 36th Street  
40 Summer Place Ct., 4 B  
Camdenton, MO 65020  
573-374-9527